

STATE OF INDIANA
INDIANA BOARD OF TAX REVIEW

INDIANA AFFORDABLE HOUSING, INC.) On Appeal from the Marion County
Petitioner,) PTABOA
)
v.) Petition for Review of Exemption
) Form 132
MARION COUNTY PROPERTY TAX) Petition No. 49-700-00-2-8-00002
ASSESSMENT BOARD OF APPEALS) Parcel No. 7033461
Respondent.)

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issue

Whether the improvements owned by Indiana Affordable Housing, Inc. (IAH), known as the Lancaster Estate Apartments (AKA: The Arbors at Cumberland) and located at 11510 E. Kirkwood Drive, Indianapolis, Warren Township, Marion County, Indiana, qualify for a 100% property tax exemption pursuant to Indiana Code (IC) 6-1.1-10-16 for charitable purpose. The Marion County Property Tax Board of Appeals (PTABOA) granted a 75% exemption for the aforementioned improvements.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall be considered a finding of fact.

2. Pursuant to IC 6-1.1-11-3, the IAH filed an application for property tax exemption with the Marion County PTABOA on May 10, 2000. The PTABOA mailed its determination to the taxpayer on November 17, 2000.

3. Pursuant to IC 6-1.1-11-7, IAH filed a Form 132 petition seeking a review of the PTABOA action by the State. The Form 132 petition was filed with the County on December 15, 2000 and hand delivered to the State on March 1, 2001.

4. The Form 132 petition indicated that the Petitioner was appealing the PTABOA's decision regarding both real and personal property but a review of the initial application (Form 136) and the PTABOA decision (Form 120) indicates that only real property (land and improvements) was involved in this appeal.

5. The Petitioner claimed exemption only for lands and lots (100%) and Improvements (buildings) (100%) on the Form 136. The determination by the PTABOA in Section IV of the Form 120 does not mention personal property. The only place personal property is mentioned is in the final determination (Section III). This appears to be a clerical error, which might occur if this section is always completed in the same manner even if one type of property is not under appeal. Accordingly, only real property exemption will be considered in this decision. However, the same logic applied to the charitable use of real property can generally be applied to personal property.

6. Pursuant to IC 6-1.1-15-4, a hearing was held on August 1, 2001 before Senior Administrative Law Judge (ALJ) Tim Rider. Testimony and exhibits were received into evidence. Joseph D. Calderon, attorney at law, represented the Petitioner. Andrew P. Seiwert, Assistant Corporate Counsel of Indianapolis and Marion County, and Melissa Tetrick, Exemption Deputy, appeared for the PTABOA.

7. At the hearing, the subject Form 132 petition with attachments was made part of the record and labeled Board Ex. A. The Notice of Hearing on Petition was labeled Board Ex. B. In addition, the following items were received into evidence:

Petitioner's Ex. A – Letter from IRS recognizing IAH as exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code.

Petitioner's Ex. B – Financial statements for IAH as of December 31, 2000.

Petitioner's Ex. C – Certificate of Continuing Program Compliance under Land Use Restrictions Agreement.

Petitioner's Ex. D – A diagram of the units at Lancaster Estate Apartments illustrating which units are market-rate and which are low-income.

Petitioner's Ex. E – 2000 income guidelines for Marion County.

Petitioner's Ex. F – A copy of Federal Revenue Procedure 96-32.

Petitioner's Ex. G – Bill Waltz memorandum of September 2, 1997. (withdrawn).

Petitioner's Ex. H – State Board final determination on Piedmont-Nantucket Cove, LLC, dated February 2, 2000.

Petitioner's Ex. I – Memorandum of Law.

Petitioner's Ex. J – Power of Attorney.

Respondent's Ex. 1 – Copy of IC 6-1.1-10-36.3.

Respondent's Ex. 2 – Tax Court decision on New Castle Lodge # 147, Loyal Order of Moose, Inc., dated August 2, 2000.

Respondent's Ex. 3 – Tax Court decision on National Association of Miniature Enthusiasts, dated September 18, 1996.

8. The ALJ did not view the property.
9. The material facts of this case are not in dispute.
10. IAH is a nonprofit organization as recognized by Section 501(c)(3) of the Internal Revenue Code.
11. IAH is not permitted to and does not make a profit from the rents charged.
12. IAH is organized for the purpose of providing safe and affordable low-income housing. The providing of such housing is characterized by the Petitioner as a “charitable purpose.” The PTABOA does not disagree with that characterization.
13. By covenant to the Safe Harbor provision of Petitioner’s Exhibit F, IAH must reserve at least 75% of the 194 available units for occupancy by residents who meet the Federal definition of “low-income.” Up to 25% may be rented at market rate.
14. The PTABOA granted to IAH the charitable exemptions of land – 64% and improvements – 75%.
15. The parties agreed that 15 acres of land was exempt from property taxes pursuant to IC 6-1.1-10-16(c)(2)(B) and that 15 acres was 64% of the total parcel (23.3 acres). The 64% exemption for land is not in dispute.
16. The parties agreed that 75% of the apartments in question were rented to qualifying low-income individuals or families and that 25% of the apartments were offered to any tenant at market rate based on the Safe Harbor covenant.
17. The PTABOA’s position is that only the apartments rented to low-income tenants are exempt while the Petitioner takes the position that if this is a charitable enterprise all the improvements should be exempt.

Conclusions of Law

1. The State was the proper body to hear an appeal of the action of the PTABOA pursuant to IC 6-1.1-15-3.

A. Burden In General

2. The courts have long recognized that in the administrative review process, the State is clothed with quasi-judicial power and the actions of the State are judicial in nature. *Biggs v. Board of Commissioners of Lake County*, 7 Ind. App. 142, 34 N.E. 500 (1893). Thus, the State has the ability to decide the administrative appeal based upon the evidence presented.
3. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816,820 (Ind. Tax 1995).
4. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. See also Ind. Code § 4-21.5-2-4(a)(10) (Though the State is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).

5. Where a taxpayer fails to submit evidence that is probative evidence of the error alleged, the State can properly refuse to consider the evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1119 (Ind. Tax 1998)(citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).
6. If the taxpayer were not required to meet his burden of proof at the State administrative level, then the State would be forced to make a case for the taxpayer. Requiring the State to make such a case contradicts established case law. *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E. 2d 1099 (Ind. Tax 1999); *Whitley, supra*; and *Clark, supra*.
7. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence “sufficient to establish a given fact and which if not contradicted will remain sufficient.” *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).
8. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer’s evidence and justify its decision with substantial evidence.

B. Constitutional and Statutory Basis for Exemption

9. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, Section 1, of the Constitution of Indiana.

10. Article 10, Section 1, of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption. In this appeal, exemption was claimed under IC 6-1.1-10-16, which provides that all or part of a building is exempt from property taxes if it is owned, occupied, and used for educational, literary, scientific, religious or charitable purposes.

C. Basis of Exemption and Burden

11. In Indiana, the general rule is that all property in the State is subject to property taxation. IC 6-1.1-2-1.
12. The courts of some states construe constitutional and statutory tax exemptions liberally, some strictly. Indiana courts have been committed to a strict construction from an early date. *Orr v. Baker* (1853) 4 Ind. 86; *Monarch Steel Co., Inc. v. State Board of Tax Commissioners*, 669 N.E. 2d 199 (Ind. Tax 1996).
13. Strict construction construes exemption from the concept of the taxpayer citizen. All property receives protection, security and services from the government, e.g., fire and police protection and public schools. This security, protection, and other services always carry with them a corresponding obligation of pecuniary support - - taxation. When property is exempted from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *National Association of Miniature Enthusiasts (NAME) v. State Board of Tax Commissioners*, 671 N.E. 2d 218 (Ind. Tax 1996). Non-exempt property picks up a portion of taxes that the exempt property would otherwise have paid, and this should never be seen as an inconsequential shift.

14. This is why worthwhile activities or noble purpose is not enough for tax exemption. Exemption is justified and upheld on the basis of the accomplishment of a public purpose. *NAME*, 671 N.E. 2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E. 2d 850, 854 (Ind. Tax 1990)).
15. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statute under which the exemption is being claimed. *Monarch Steel*, 611 N.E. 2d at 714; *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E. 2d 936, 938 (Ind. Tax 1987).

D. Conclusions Regarding the Exemption Claim

16. Generally, when a charitable exemption is requested the State will perform a complete analysis to determine whether the requirements of IC 6-1.1-10-16 have been met.
17. Said analysis would normally be required to determine whether the property is owned, occupied and used for a charitable purpose.
18. In the instant case this analysis need not be performed because the PTABOA granted IAH a charitable exemption for both land and improvements thereby conceding that IAH meets the requirements of IC 6-1.1-10-16.
19. While the State will not concede that IAH would qualify for an exemption if the analysis mentioned in Conclusion 16 above were to be performed, the State will confine its examine in this document to the issue the parties have presented as being in dispute.

20. The issue in dispute is the amount of exemption the improvements qualify for, that amount being either 75% as approved by the PTABOA or 100% as requested by the Petitioner.
21. The PTABOA based its finding of a 75% exemption for improvements on a Tax Court decision for *New Castle Lodge #147, Loyal Order of Moose, Inc. v. State Board of Tax Commissioners*, 733 N.E. 2d 36 (Ind. Tax 2000) which cites IC 6-1.1-10-36.3 regarding proportional exemptions from property tax.
22. *Loyal Order of Moose* is currently under appeal by the State but its provisions must be adhered to when cited until that appeal is resolved.
23. *Loyal Order of Moose* dealt with a fraternal organization that used its property partially for charitable purposes and partially for organization social activities.
24. The Tax Court's ruling dealt with the extent of time the property was used for charitable purposes. It found that the property was predominately (more than 50% of the time) used for charitable purposes. Accordingly, it ruled that the organization was entitled to a property tax exemption, and remanded the case to the State for determine of what percentage the exemption should be, pursuant to IC 6-1.1-10-36.3(b)(3). *Id* at 40.
25. In the instant case the PTABOA had conceded that IAH owns the Lancaster Estate Apartments for the charitable purpose of providing safe, affordable housing for low-income individuals or families but would allow an exemption only for the apartments specifically rented to low-income tenants rather than basing the exemption on an overall examination of the nonprofit project.

26. Conversely the IAH conceded that it did rent 25% of the apartments available at the complex in question at market rate to anyone who qualified regardless of income.
27. In attempting to support its case for a charitable exemption for the apartments rented at market rate, the Petitioner declares that renting some apartments at market rate is a furtherance of IAH's charitable purpose. IAH maintains that attracting tenants who can afford to pay the market rate aids in relieving the poor and distressed by providing safe, clean and affordable housing.
28. In support of its position IAH cites two important Indiana cases, *State Board of Tax Commissioners v. Methodist Home for the Aged*, 241 N.E.2d 84 (Ind. App. 1968) and *Raintree Friends Housing, Inc. v. Indiana Department of State Revenue*, 667 N.E.2d 810 (Ind. Tax 1996).
29. *Methodist Home* involved a retirement home operated by a nonprofit organization, which provided for full care of its aged occupants. The majority of its occupants made an average payment of \$9500 for the right to occupy an apartment. About 25% made no such contribution. *Id* at 86,87.
30. In *Methodist Home* the Court of Appeals granted a 100% property tax exemption, overruling the State, which had granted a partial exemption due to the fact that some of the occupants made the payments mentioned above. The Court of appeals summarized its conclusions by holding that “* * it does not operate for the benefit of any select group of individuals or institutions. The fact that it is necessary for the petitioner to charge a substantial admission fee in order to carry on its work does not deprive it of the status of a tax exempt corporation.” *Id* at 89.

31. The petitioner also relies on *Raintree Friends* which involved the operation of several retirement homes for the aged and whether or not these retirement homes should be required to pay gross income tax, sales tax, and county food and beverage taxes. The Department of Revenue had found that these retirement homes were taxable. The Tax Court reversed and concluded that “[the retirements homes] are organized and operated exclusively for charitable purposes, and thus are exempt from gross income tax, sales tax, and food and beverage tax.” *Id* at 817.
32. In explaining its conclusion the Tax Court in *Raintree Friends* favorably quoted *Methodist Home* several times including as follows: “Thus, by meeting the needs of the aging, namely: ‘relief of loneliness, boredom, decent housing that has safety and convenience and is adapted to their age, security, well-being, emotional stability, (and) attention to problems of health,’ a charitable purpose is accomplished.” *Id* at 422, 241 N.E.2d at 86.
33. While *Methodist Home* and *Raintree Friends* provide some support for the Petitioners argument, it must be noted that both cases involved homes for the aged that provided many special amenities and support services that aged citizens need to live and survive from day to day. The only substantial service IAH provides is lodging and to the 25% in question it provides lodging at the market rate. Such lodging would be available at any for profit apartment complex for the same market rate.
34. It also must be noted that *Loyal Order of Moose* is the most recent case (2000) and specifically addresses a situation where an organization’s property is “predominately used” for * * * charitable purposes more than 50% of the time. *West’s A.I.C. 6-1.1-10-36.3(a)*. *Id* at 36.

35. The Tax Court in *Loyal Order of Moose* found that “the Moose used its property predominately, but not solely for charitable purposes” and in its conclusion “* * * REVERSED and REMANDED to the State Board with instructions to conduct further proceedings to determine the exemption allowed * * *.” *Id* at 36.
36. The PTABOA correctly applied the Tax Court rationale presented in *Loyal Order of Moose* by noting that the predominate use (more than 50%) of the apartments in question was charitable; calculated that 75% of the apartments were rented to low income tenants (the Petitioner agrees with that figure); and awarded a 75% exemption from property tax for the improvements in question.
37. The State agrees with the PTABOA’s application of case law, affirms a 75% exemption from property taxes for improvements and the 64% exemption for land that the parties previously agreed upon.